No. 11,874

IN THE

United States Court of Appeals

For the Ninth Circuit

In the Matter of
CHRIST'S CHURCH OF THE GOLDEN RULE,
a California Non-Profit Religious Corporation,
Bankrupt.

PETER PETERSEN, MRS. PETER PETERSEN and GEOGRE D. PATRICK,
Appellants,

vs.

PAUL W. SAMPSELL, L. BOTELER and McINTYRE FARIES, as Trustees in Bankruptcy of the Estate of Christ's Church of The Golden Rule, Bankrupt, and CHRIST'S CHURCH OF THE GOLDEN RULE, Bankrupt,
Appellees.

APPELLANTS' PETITION FOR A REHEARING.

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Table of Authorities Cited

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APPELLANTS' PETITION FOR A REHEARING.

To the Honorable William Denman, Presiding Judge, and to the Honorable Associate Judges of the United States Court of Appeals, for the Ninth Circuit.

The Appellants, Peter Petersen, Mrs. Peter Petersen and George D. Patrick respectfully petition the above-entitled Court for a re-hearing in the above-entitled matter, and for grounds, show:

That the above-entitled matter is an appeal from the District Court's denial of a motion to vacate the adjudication; originating in summary proceedings commenced by the Appellee Trustees in 1946 wherein their property consisting of Patrick's stock in trade as a plumbing contractor and the home and business of the Petersen's known as Petersen's Cafe, Maywood were claimed, along with other grounds as forfeited for their religious beliefs and affiliations with the religious society whose temporal agency fell into the hands of the Bankruptcy Court. Their two respective summary proceedings came on for review before the District Court on November 14, 1947, and to clearly present this defense, the matter was presented as a motion, based upon the records in their respective reviews pending before the District Court, and in part upon evidence offered and some taken before the District Court.

Appellants' counsel believed that the various grounds were well founded in law, cited 47 authorities in the Opening Brief and 39 in the Reply Brief, and several additional at the argument on the 8th

of November. It involved many serious, important and basic questions of law including basic Constitutional rights of the Appellants:

(1) The Constitutional right to Freedom of Religion, First Amendment of the U. S. Constitution which included the legality of the judicial arm of the Federal Government supervising, running and operating and by decree of forfeiture taking the affairs of a church and its ecclesiatical society. It involved the abuse and perversion of the processes of the Federal Court through its Bankruptcy administration in a series of acts involving a religious persecution without precedence in the history of Anglo Saxon jurisprudence.

(2) A Church corporation under the laws of California holds as a temporal agency, bare legal title in trust to manage for and in the interests of the spiritual organization and those in it and is wholly subservient thereto.

(3) It involved the power of a temporal agency's official to convey some two to three millions of dollars of property and money held under an express trust, to satisfy a mere $110,000 in debts; and a total misunderstanding by the official of the nature and character of his acts in doing so in a dispute with some state official. It involves such attempted acts, done without the consent or vote of the spiritual organization, or those in it, or of the corporate members of the temporal agency.

(4) It involved a procedure by the bankruptcy administration and those acting for it, shown by clear statements of both the Referee and counsel for the Trustee:

(a) The religious beliefs of the Church were held fraudulent for want of judicial proof in a heresy trial; and all those in the religious society were divided into two groups depending solely upon current religious beliefs of the individuals. Those who renounced their beliefs were "dissenters" and thus entitled to claim any property in the estate they wished. Those who retained their religious beliefs and did not promptly dissociate with others holding those beliefs, in which case they (including the appellants) were stripped of their property in summary proceedings predicated for jurisdiction upon religious beliefs (as shown in the Petersen review record), and subjected to the inquisition procedures peculiar to the Bankruptcy administration originally calculated to deal with dishonest debtors and people seeking to effect frauds and preferences. Extensive use of this inquisition was used as a means of religious persecution against those retaining their religious beliefs or associating with those holding those beliefs.

(b) The temporal affairs of the Church were put into the hands of two professional bankruptcy liquidators and a brewery owner, none with sympathy for the religious views of the Church, who ran the affairs of the Church from the bankruptcy until the end of September, 1946, when this practice was stopped by

the District Court. Over $2,000,000 of the Lord's purse was disbursed by the Trustees in the first year and a half of their stewardship of the religious society's financial affairs; included in this were donations coerced from those in the Church, both money and services, under threats that the religious society would be disbursed and broken up if not made to the Trustees in Bankruptcy.

(c) The ransacking, without legal authority or justification, of the personal papers of those in the religious society by the Trustees and their paid detectives after November, 1945, and as late as Christmas, 1946, and the seizure and suppression of the religious literature of the religious society.

(5) The District Court upon the Petition for a Chapter XI proceedings which was improperly brought, in effect dismissed the proceedings and adjudicated the Church temporal agency a bankrupt, without following 11 USCA 776 which requires notice to creditors and interested parties (which would include the appellants who were among those in the religious society—Affiliates) and that the proceedings be dismissed or an adjudication, not in the conjunctive.

Rather than go into length on these points, we merely list some of the more important points covered in the Appellants' two briefs and the record; and respectfully draw the Court's attention to the matter covered in the briefs.

Upon oral argument, one of the members of the Court indicated that the Appellants had not shown

sufficient interest to bring the motions. We need only point to the Reply Brief, pages 1 to 4 inclusive, to the record and to the cases cited at the oral argument.

An application to the Court for an order, is a motion, which under the Federal Rules must be in writing. This requirement of a writing is met if stated in the written notice of the hearing.

Federal Rules of Civil Procedure, 7(b).

The Motion was stated to be upon the records in the two reviews and upon evidence to be introduced and the grounds stated. The records on review amply show the individual persecutions for religious beliefs and affiliations; and that each is a person in the religious society.

Furthermore, the bankrupt church corporate temporal agency was a party to the original motion. (Appellants' Suppl. p. 33, where the appearance of counsel for the bankrupt is shown). The president of the corporation in bankruptcy was called by the Appellants as a witness and testified for them (Appellants' Suppl. p. 81 et sep.); and the bankrupt's counsel was called as a witness by the Appellees' counsel and testified against Appellants. (Appellant's Suppl. p. 98, et seq.) The Bankrupt Church corporation was a party to the appeal, and its counsel served with briefs, but did not see fit to appear. Under the circumstances where those in control of a Church undertake to divert the property, certainly the beneficiaries of the trust, those in the ecclesiastical

society can seek to protect their own constitutional personal rights from invasion and those of the others in the society as well.

In *Beatty v. Kurtz,* 2 Peters 566, 7 L. Ed. 521, an action was brought by several plaintiffs to protect property of their Lutheran Church, alleging they were trustees of the Church. The Court stated that the question of proof of their capacity of trustees need not be considered as mere parishoners may sue without joining all others in the Church; and that in a voluntary association, some can sue for the others in the society.

In *Lilly v. Tobein,* 103 Mo. 477, 15 S.W. 618, the Court held that individuals in the Church could sue to establish a will passing land to the Catholic Church of Lexington, Mo. The Missouri law is the same as the California law enunciated in *Wheelock v. First Presbyterian Church,* 119 Cal. 477, 51 P. 841, that the ecclesiastical group is not incorporated, and the corporation acts only as an agent for the temporalities, and an individual in the Church may sue to protect and establish property rights of the Church.

The Eighth Circuit in *Schell v. Leander Clark College,* 2 F. (2d) 17, held that a single person in a religious society can sue or defend on behalf of all in the congregation (Church of United Brethren of Christ, etc.); that a single person in the religious society could enjoin the trustees of the incorporated college from conveying the endowment and campus of the college to others; and the Board of the corporation are mere administrative agents for the

Church and its members, empowered to do certain acts as mere agents.

In *Fink v. Umscheid,* 40 Kan. 271, 19 P. 623, plaintiff, one in a congregation from whom money was collected to acquire a church farm, so that the income from its rental could support the parish and priest of the Catholic Church, could sue and recover from a purchaser who bought a portion of the farm from the Bishop. In that case the Court took testimony as to the intentions of the parties as to the terms of the trust; the Bishop claiming the trust was for education of poor young persons and he sold the land to carry out the trust; and the other contention was that the priest solicited the contributions for the farm to support the parish and its priest. The Court found that the trust was for the latter and the conveyance was in contravention of the trust. In such a Church, a person is a part of a congregation by merely attending services, and may transfer to any other congregation by merely attending services in the other church of the same denomination.

In *Nance v. Busby,* 91 Tenn. 303, 18 S.W. 874, a Baptist congregation split and suit was brought by some individuals in the minority group to impress the trust upon the Church property for their individual group. The Court held that the Church corporation holds title in trust and the right to sue depends not on corporation membership but on the relationship to the Church—the ecclesiastical society. (This is the rule discussed in *Wheelock v. First Presbyterian Church,* 119 Cal. 477, 51 P. 841.) Thus the rights as plaintiffs of the Petersens and Patrick de-

pends not upon any claimed membership in the bankrupt corporation, as Appellees' Counsel contends, but upon being parishioners or those in the religious society.

An extremely interesting and important decision is that of *Mannix v. Purcell,* 46 Ohio St. 102, 19 N.E. 572. In that case the Roman Catholic Archbishop of the City of Cincinnati incurred debts and made a general assignment for the benefit of creditors. Some 200 parcels and tracts of land were involved, and it involved the legality of mortgage by the assignee and related questions. The Court held that the property was held under a *trust* and did not pass by the assignment for the benefit of creditors of the archbishop. Though some congregations were incorporated, others were not; and the congregations were constantly changing, a person merely attended a church and that constituted the joining of the congregation. He or she transferred by attending another; and those in a congregation were transitory and indefinite and constantly changing. Yet the Court held that one in the congregation of such a church could be a party to the action, sue and defend on behalf of the ecclesiastical group; that a pious trust was of necessity indefinite in its beneficiaries but any in the group were proper parties to enforce the trust and protect the society's property.

But the above-entitled Court did not make its decision upon such a point in its opinion of a mere dozen lines. The meat and substance of the decision is contained in a single sentence "The motion did not state, nor does the record disclose, any fact or

facts entitling appellants to an order setting aside the adjudication."

The decision shows that in a case adjudicating a Church a bankrupt, the first precedent or decision involving a religious society in such a position, all the facts shown in the record do not deserve further comment or discussion.

It could be that the case is so without merit as not to deserve any greater opinion or decision or comment. However, it is the custom of the Court in its decisions to afford some reasoning or comment to the various contentions. It might leave the unjust inference that when the violation of the highest of all the personal liberties guaranteed by the Constitution have been subjected to an unprecedented violation, that the personnel of the Court were afraid to discuss or consider these violations. The Court has never shown cowardice nor avoided a plea of help from the persecuted for their Constitutional heritages. It is the avoidance of showing of the "white feather" to his buddies that causes soldiers to face death and even go into certain death in time of war. It was the fear of the judges in the Third Reich, under a system of jurisprudence so highly praised by Dean Wigmore before the judges refused to pass upon acts of the Geheimdestaatspolizei that resulted in the loss of all personal liberties in that nation. The Bill of Rights protected in our Constitution is no better than the Courts that enforce them. Does this decision mean that some Churches and those in them now cannot appeal to the Courts and have a decision on their constitutional rights? Does this mean that some per-

sons because of their religious affiliations cannot have a decision as the Court ordinarily gives with its usual well reasoned statements and grounds for its holdings? Does this mean that there will be perpetuated upon the printed decisions of the Federal Courts a case of first impression of a religious society being placed under the control and domination of the bankruptcy courts which so summarily deals with such an important question?

Does the Court wish a decision involving such an important question of first impression to stand with such a summary decision and holding? Might it not leave an unjust inference that if the question involves such a basic personal constitutional right as freedom of religion, and such flagrant violations, that the Court is afraid to hear and determine it? Might it not leave the unjust inference that one of the Federal Appellate Courts, next to the Supreme Court, is guilty of cowardice upon such a basic freedom, so recently one of the *causus belli* of such a world conflict?

We ask that the Court, *en banc,* consider a re-hearing, and the effect and nature of the present decision.

Dated, San Francisco, California,
December 10, 1948.

Respectfully submitted,
HOWARD B. CRITTENDEN, JR.,
Attorney for Appellants
and Petitioners.

CERTIFICATE OF COUNSEL

Rule 25

I certify that in my judgment the foregoing petition for a re-hearing is well founded and that it is not interposed for delay.

Dated, San Francisco, California,
December 10, 1948.

HOWARD B. CRITTENDEN, JR.,
Attorney for Appellants
and Petitioners.